

Application No.: 10/553,002
Attorney Docket No.: 5413YSH-1
Reply to Office Action of September 25, 2006

Amendments to the Drawings:

The replacement drawing sheets attached to the end of this AMENDMENT AND RESPONSE include changes to Figures 4B, 5, 6A-C, 7 and 8, as requested by the Examiner in the Office Action dated September 25, 2006, and replace the original sheets.

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REMARKS/ARGUMENTS

In the Office Action dated September 25, 2006, the Examiner raised several objections and rejected all pending Claims (Claims 1-11). Applicant has amended the specification, drawings and Claims to overcome these objections and rejections, and present arguments in support of the amended claims being in condition for allowance. In addition, Applicant submits new Claims 12 – 19 for consideration. Accordingly, Claims 1-19 are now pending. As set out more fully below, reconsideration and withdrawal of the rejections to the Claims are respectfully requested.

Objections to the Specification

The Examiner objected to the title of the invention for not being clearly indicative of the invention. The title has been amended pursuant to the Examiners suggestion.

The Examiner made further objection to the use of element numbers inconsistent with those from the prior art reference discussed on page 2 of the original specification. The specification has been amended to refer to the correct element numbers associated with Figure 5 of the present invention.

The Examiner also objected to the reference to US 5,103,025 in Applicant's IDS for not being directed to a surgical stapler or analogous art. This reference was included by mistake, and a supplemental IDS shall be prepared and filed separately from this paper to correct this error.

Objections to the Drawings

The Examiner objected to Figures 4B, 5, 6A-C, 7 and 8 for failing to designate those drawings as prior art. Replacement sheets for these Figures with the correct designation are included with this Amendment and Response. No other changes have been made.

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Objections to the Claims

The Examiner objected to the term “thickness” for being inconsistent with the conventional use of the term. The specification has been amended pursuant to the Examiners suggestion. Other amendments to the specification have been made for purposes of clarity or to correct typographical errors. No new matter has been added.

Rejection of Claims under 35 U.S.C. 112

Claims 1-11 were rejected under 35 U.S.C. 112, second paragraph, as indefinite. The Examiner specifically noted that the term “the top” as used in claim 1 lacked antecedent basis. Claim 1 has been amended and the term has been eliminated from all claims. In light of the amendments the Examiners rejection has been overcome.

Rejection of Claims under 35 U.S.C. § 102(b)

The Examiner has rejected Claims 1-5, 8-9 and 11 under 35 U.S.C. § 102(b) as being anticipated by Main et al. (U.S. 5,533,661). The Claims have been amended to overcome this rejection. It is well recognized that claims are anticipated if, and only if, each and every element, as set forth in the claim is found in a single prior art reference. Vertegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631 (Fed. Cir. 1987). To assist the Examiner in examining the amended Claims, Main et al. fails to teach or suggest at least the features italicized in amended Claim 1 as set forth below:

1. A circular stapler comprising:
a detachable anvil;
a head section coupled to the detachable the anvil and having a head section cover; and
a cylindrical body that longitudinally extends, one end of the cylindrical body is coupled to the head section,
wherein a recessed portion in a side surface of the cylindrical body is positioned under the head section cover *such that the recessed portion is adapted to receive an inner portion of an intestine.*

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The Examiner has asserted that a recessed portion (observed in Fig. 1 of Main et al.) due to a decrease in the diameter section formed on the cylindrical body under the head section cover is disclosed. However, Main et al. does not disclose a recess for anastomosing two tubular tissue sections in a side-to-end connection without causing one of the tubular tissue sections to exhibit a decrease in diameter, as discussed in detail by the disclosure of the present invention on pages 4-5 and 14-16 of the specification. Furthermore, the device of the present invention discloses a reduced length head section cover (15 to 18 mm in the stapler of the present invention) so that the recessed portion 41 is positioned to receive the circumferential length of a small intestine. Main et al. does not disclose a recessed portion in the cylindrical body, and therefore may not be used to receive a circumferential length of a tubular tissue such as a portion of a small intestine to accomplish a side-to-end connection, for example. Claim 1 has been specifically amended to distinguish over Main et al. and incorporate a more complete description of the recessed portion. Accordingly, the amended Claim 1 is allowable over Main et al.

The remaining claims all depend from Claim 1 and therefore are allowable over Main et al. Applicant submits that the original dependent Claims provide additional reasons for allowance.

Rejection of Claims under 35 U.S.C. § 103(a)

The Examiner has rejected Claims 6-7 and 10 under 35 U.S.C. § 103(a) as being obvious in light of Main et al. (U.S. 5,533,661). Applicant has amended Claim 1, from which claims 6-7 and 10 depend from, to overcome Main et al. and therefore believe this argument to be moot. Main et al. does not provide suggestion or motivation to modify the circular stapler to provide a recessed portion dug out from the circumference of the cylindrical body, and it would not have

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been obvious to one of ordinary skill in the art to make this modification absent any motivation. Therefore, the amended Claims are not obvious in light of Main et al. and are now in condition for allowance.

Based upon the foregoing, Applicant believes that all pending Claims 1-19 are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: Ian R. Walsworth

Ian R. Walsworth
Registration No. 56,635
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

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